

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DONNA STURKIN

PLAINTIFF

VS.

CIVIL ACTION NO.: 3:16CV434CWR-J-FKB

VICKY PATRICK,
MARCUS D. ELLIS JR.,
LEAKE COUNTY, MISSISSIPPI,
SCOTT COUNTY, MISSISSIPPI,
NESHOBIA COUNTY, MISSISSIPPI,
NEWTON COUNTY, MISSISSIPPI,
JOHN DOES 1-5

DEFENDANTS

DEFENDANT VICKY PATRICK'S MOTION TO DISMISS

Defendant Vicky Patrick files her motion to dismiss this action against her, and in its support, states as follows:

1. That on June 9, 2016, the Plaintiff, Donna Sturkin (Sturkin), filed her Complaint against Vicky Patrick (Patrick) , Marcus D. Ellis Jr., Leake County, Mississippi, Scott County, Mississippi, Neshoba County, Mississippi, Newton County, Mississippi, and John Does 1-5.
2. That Sturkin alleged that on November 15, 2010, she entered the Eighth Judicial District Drug Court program (Drug Court) where Defendant Patrick became her probation officer. Participation in Drug Court required that she undergo periodic testing for alcohol and drug use and to appear in court on a regular basis.
3. That Sturkin alleged that Patrick used her position as her probation officer to continuously violate her Fourth Amendment right to be free from unlawful searches and seizures and Fifth Amendment right not to be deprived of her property or liberty without due process of law.
4. That specifically, Sturkin claimed that Patrick made demands on her that Drug Court

rules did not require her to perform, but Patrick would threaten her with jail if she did not comply. In addition, Sturkin claimed Patrick would steal items from the store in which she was working by checking them out at Sturkin's register, not pay for them, and threaten Sturkin with jail time if she required Patrick to pay for the items. Sturkin also claimed that when she was working at a hotel, Patrick would demand free lodging for herself and her friends and threaten her with jail if she did not comply. And on those occasions when she did not comply with Patrick's demands, Patrick would falsely report to the Judge that Sturkin had tested positive for alcohol consumption.

5. That Sturkin alleged that as a result of Patrick's actions, she suffered the sanctions of wrongful arrest, coercion, false imprisonment, punishment, loss of income, loss of employment, inconvenience, prolonged time in the Drug Court, and mental and emotional distress. Therefore, she brought this action pursuant to 42 U.S.C. § 1983 for violation of the rights, privileges and immunities secured to her by the Constitution and laws for the United States.

6. That to recover for an unconstitutional conviction, imprisonment, or any other harm that would result in the conviction or sentence to be invalid, the Plaintiff must prove that the conviction or sentence has been reversed, expunged, or called into question by some state or federal tribunal. Otherwise, a section 1983 plaintiff cannot prevail on such claim.

7. That in this case, Sturkin has not shown or even alleged that her wrongful arrest, false imprisonment or punishment was reversed, expunged or called into question by a state or federal tribunal. Therefore, any claim based on such allegations should be dismissed.

8. That furthermore, any state tort law claims are barred by Miss. Code Ann. § 11-46—11 in that the statute of limitations for any tortious action of Patrick had to be filed within one year from the alleged act. Sturkin also failed to follow the notice requirements of this statute. Therefore, any state law claims should be dismissed as well.

WHEREFORE, PREMISES CONSIDERED, Defendant Vicky Patrick respectfully requests that this honorable court dismiss this action, award her attorneys' fees, assess all costs and expenses against the Plaintiff, and for such other, further, and different relief as the court deems appropriate under the premises.

RESPECTFULLY submitted, this 14th day of July, 2017.

VICKY PATRICK, DEFENDANT

By: /s/ OTTOWA E. CARTER, JR.
Ottowa E. Carter, Jr., MSB#8925
Attorney for Defendant Vicky Patrick

OF COUNSEL:

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CERTIFICATE OF SERVICE

The undersigned counsel does hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record:

So certified, this 14th day of July, 2017.

/s/ Ottowa E. Carter, Jr.
Ottowa E. Carter Jr.